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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,745	09/28/2001	Alan Wightman	DEXNON/095/PC/US	8639

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ALIX YALE & RISTAS LLP  
750 MAIN STREET  
SUITE 1400  
HARTFORD, CT 06103

EXAMINER
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CHRISS, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

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06/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/869,745

Applicant(s)

WIGHTMAN ET AL.

Examiner

Jennifer A. Chriss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 34,35,37-41 and 45-53 is/are pending in the application.
- 4a) Of the above claim(s) 45-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-35,37-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed 12/4/2006, and the response to the Restriction Requirement, filed 4/2/2007, have been entered and have been carefully considered. In the listing of claims filed 12/4/2006, claims 1 – 33, 36 and 42 – 44 are cancelled, claims 34 – 35 and 37 – 41 are amended, claims 45 – 53 are added and claims 34 – 35, 37 – 41 and 45 – 53 are pending. In view of the cancellation of claims and the amendments filed on 12/4/2006, the Examiner withdraws the rejections as detailed in paragraphs 2 – 14 of the Office Action dated 6/15/2006. The rejection as being unpatentable over Wielockx et al. in view of Heyse, et al. is maintained and amended below to account for the claim amendments. The invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. Applicant's election with traverse of claims 34 – 35 and 37 – 41 in the reply filed on April 2, 2007 is acknowledged. The traversal is on the ground(s) that Applicant's independent claims include the same "special technical feature" and Applicant's "special technical features" are not present in the cited references. This is not found persuasive because the method claim of 45 requires that the web material is formed from a dispersion (i.e. a paper laying process) while the casing paper of claim 34 does not

require such a feature. Furthermore, the Examiner submits that Wielockx and Heyse in combination do teach Applicant's invention and thus Applicant's "special technical features". Please note that this is the sole rejection maintained and refer to the rejection and response to arguments below for details. In light of this, the Examiner submits it would be a serious burden to examine both sets of claims and thus the restriction is maintained.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

4. Claims 34 – 35 and 37 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wielockx et al. (US 6,395,356) in view of Heyse, et al. (US 3,822,182).

Wielockx is directed to a food casings having modified release properties and methods of manufacture (Title). Wielockx teaches specifically the use of the casing as a sausage casing (column 5, lines 10 – 15).

As to claims 34 and 37, Wielockx teaches that the fibrous reinforcements for the casing are prepared from fibers approved for use in food wrapping applications. Wielockx teaches the use of cellulosic fibers such as hemp, cotton, wood and their derivatives (column 5, lines 25 – 35). Wielockx teaches that other desirable reinforcements may be prepared in addition to the cellulosic fibers such as soft wood fibers. Wielockx also teaches the use of woven, nonwoven and spun fibers such as

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polyesters and polyamides (column 5, lines 35 – 50). Wielockx notes that the reinforcement of choice is the most economical web which will impart the required strength and other characteristics which are consistent with the properties of the casings described herein (column 5, lines 25 – 45). Wielockx teaches impregnating the fibrous substrate with a composition comprising viscose solution and a polymeric adhering agent (column 5, lines 50 – 65). It should be noted that the Examiner equates the viscose solution to Applicant's "regenerated cellulose". Wielockx teaches that the fibrous casing is passed through gas fueled hot air dryers and subsequently rolled onto reels (column 7, lines 10 – 30). Although Wielockx does not specifically teach drying by means of a plurality of heated cylinders, the Examiner submits that the product limitations of the claim are met. It should be noted that the method of forming the product given that the product is structurally the same is not germane to the issue of patentability of the product.

As to claim 35, Wielockx teaches impregnating the composition into the substrate, regenerating the cellulose and forming a casing material (column 7, lines 10 – 30).

As to claim 38, Wielockx teaches the use of hemp fibers which are considered to be a type of vegetable fiber in the art.

As to claims 34 and 37, Wielockx teaches the use of cellulosic fibers such as hemp, cotton and wood and synthetic fibers such as polyesters and polyamides but fails to specifically disclose the use of the combination of both cellulosic fibers and synthetic

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fibers. As to claim 37, Wielockx requires the use of at least one organic polymers selected from polyester, polyester copolymer, polyamide, polyamide copolymer, polyolefin and polyolefin copolymer. As to claim 39, Wielockx fails to teach the inclusion of at least some woodpulp fibers in an amount of up to 50% by weight of the total weight of the cellulosic and synthetic fibers.

Heyse, et al. is directed to an open or porous paper stock suitable for use as a food casing (column 1, lines 35 – 45). Heyse teaches a wet-laid paper can be made comprising abaca admixed with various proportions of other natural, including jute, caroa, sisal or various wood pulps such as bleached or unbleached kraft may be used, or man-made fibers, including nylon (polyamide) and polyester (column 3, lines 69 – 75 and column 4, lines 1 – 5). Heyse teaches that the fiber selection depends on the desired end use (column 3, lines 70 – 75).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine cellulosic fibers with synthetic fibers as suggested by Heyse in the fibrous casing of Wielockx motivated by the desired end requirements of the casing including strength and other characteristics which are consistent with the properties of the casings described herein (Wielockx, column 5, lines 25 – 45 and Heyse, column 3, lines 70 - 75).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wood pulp fibers as suggested by Heyse in the fibrous casing of Wielockx motivated by the desired end requirements of the casing including

strength and other characteristics which are consistent with the properties of the casings described herein (Wielockx, column 5, lines 25 – 45 and Heyse, column 3, lines 70 - 75).

As to claims 39 – 41, Wielockx in view of Heyse fails to disclose that the synthetic fibers are present in an amount ranging from 0.5 – 20% by weight as required by claim 40, from 3 – 9% by weight as required by claim 41 and woodpulp fibers in an amount up to 50% as required by claim 39. However, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the amount of synthetic fibers and woodpulp fibers based on the required strength and other characteristics which are consistent with the properties of casings since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454 USPQ 233 (CCPA 1955). In the present invention, one would have been motivated to optimize the amount of synthetic fibers and woodpulp fibers in the paper motivated by the desire to optimize the strength and other characteristics making it suitable for a casing material.

As to claim 34, although Wielockx in view of Heyse does not explicitly teach the claimed lower cross direction wet expansion compared to a similar web material comprising only the same cellulosic fibers, it is reasonable to presume that the lower cross direction wet expansion value is inherent to Wielockx in view of Heyse. Support

for said presumption is found in the use of like materials (i.e. a porous substrate made of a paper comprising natural fibers such as plant fibers and synthetic fibers such as nylon or polyester made by wet-laying process) which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a lower cross direction wet expansion compared to a similar web material comprising only the same cellulosic fibers would obviously have been present once the Ferreira product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

### ***Response to Arguments***

5. Applicant's arguments filed December 4, 2006 in regards to the rejection over Wielockx in view of Heyse have been fully considered but they are not persuasive.

Applicant argues that Heyse teaches away from using heated cylinders. It should be noted that the Examiner only relies on Heyse to teach the use of a combination of cellulosic and synthetic fibers and also to teach the inclusion of woodpulp fibers. As noted in the rejection, the primary reference, Wielockx, teaches that the fibrous casing is passed through gas fueled hot air dryers and subsequently rolled onto reels (column 7, lines 10 – 30). The Examiner has submitted that, although Wieklockx does not teach drying using heated cylinders, the final product would be the same absent any evidence to the contrary. Applicant relies on the Heyse reference to demonstrate that the same web dried two different ways result in different properties. Likewise, Applicant cites portions of the Specification indicating that is discusses that different expansion profiles



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can result from using different methods to dry the same web. The Applicant has not provided any evidence that the process of Wieklockx would result in product with different properties compared to Applicant's claimed invention. The arguments are not persuasive and the Examiner maintains the rejection over Wielockx in view of Heyse.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Chriss whose telephone number is 571-272-7783. The examiner can normally be reached on Monday - Friday 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571 - 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jennifer Chriss  
June 6, 2007



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